

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V.K. MOHANAN
&
THE HONOURABLE MR. JUSTICE C.K. ABDUL REHIM

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

Mat.Appeal.No. 1026 of 2014 ()

APPELLANT/PETITIONER:

SAROJINI,
W/O. SATHYARAJA PANICKER,
PALAPALLY MELATHIL VEEDU
THIRUVALLOM VILLAGE, THIVANANTHAPURAM.

BY ADVS. SRI. L. MOHANAN
SMT. LIGEY ANTONY

RESPONDENTS/RESPONDENTS 2 TO 5:

1. L.S. JAYA,
D/O. LEELA, LEELA NIVAS, T.C. 13/2137
KANNAMMOOLA, MADATHUVILAKOM MURI,
PATTOM VILLAGE, THIRUVANANTHAPURAM.
2. L.S. KOMALAM,
D/O. LEELA, DO. DO.
3. L.S. MANGALAM,
D/O. LEELA, DO. DO.
4. L.S. SUBHA,
D/O. LEELA, DO. DO.

R1 TO R4 BY ADVS. SRI. PIRAPPANCODE V.S. SUDHIR
SRI. JELSON J. EDAMPADAM

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 12-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

V.K. MOHANAN & C.K. ABDUL REHIM, JJ.

Mat. Appeal No. 1026 OF 2014-A

DATED THIS THE 12th DAY OF JANUARY, 2015.

J U D G M E N T

Abdul Rehim, J:

The appellant herein was the petitioner before the Family Court in OP No.530/2005, which was filed seeking a decree of declaration to the effect that the petitioner is the legally wedded wife of deceased Sri.Sathyaraja Panicker and that the petitioner and her children alone are the persons entitled to inherit properties belonging to the deceased and that no other person have any right or authority over the properties which are included in the schedule to the petition filed before the Family Court. Consequently, the petitioner also prayed a permanent prohibitory injunction restraining the respondent or any other person claiming under her from trespassing into the scheduled property and buildings situated therein and from committing any waste therein and from alienating the same and from executing any documents with respect to the same and from changing its present lie and nature.

2. The respondents herein are the children of Smt. L.K. Leela who was the counter petitioner before the Family Court in OP No.530/2005. She had resisted the petition contending that she is the legally wedded wife of Sri. Sathyaraja Panicker, having 4 children born out of the wedlock. It was also contended that she is the family pensioner of the deceased Sathyaraja Panicker, who was an employee of KSRTC. The respondent contended that, she along with the 4 daughters alone are the legal heirs entitled to inherit estate of deceased Sri.Sathyaraja Panicker. It was also contended that the deceased had executed a gift deed by which the schedule property was transferred in favour of the daughters and a partition was already effected by meets and bounds with respect to the property gifted. The respondent had put forth a counter claim before the Family court seeking a decree to evict the petitioner from the house situated in the schedule property. The petitioner failed to submit any objections to the counter claim.

3. The appellant/ petitioner had failed to prosecute OP No.530/2005 before the Family Court. Hence the said

OP was dismissed for default on 01-06-2009. The Family Court proceeded with the counter claim and evidence of the original respondent before the Family Court was recorded. She filed affidavit in lieu of chief examination and marked documents on behalf of her. The Family court found that, in view of the uncontroverted allegations the counter claim stands proved. Therefore by virtue of judgment passed on 13-10-2010 the Family Court dismissed OP No.530/2005 and allowed the counter claim directing the appellant herein to vacate the buildings situated in the schedule property within 45 days, making it clear that on failure the respondent is entitled to evict her from the building through due process of law.

4. The appellant/ petitioner filed two distinct interim applications. One seeking restoration of OP No.530/2005 and seeking to set aside the ex parte decree in the counter claim and another seeking for condonation of delay in filing the application. Both the above interim applications were disposed of by the Family Court through order dated 20-10-2004, which is impugned in this appeal. The present

respondents were impleaded in the interim applications since the original respondent died during pendency. The Family Court found there was delay of 1047 days in filing the application for restoring the OP which is dismissed for default as early as on 01-06-2009. The appellant contended before the Family Court that she was suffering from rheumatic fever and arthritis since the year 2009 onwards and she could not appear on court on 01-06-2009, on the date on which date she was set ex parte. It is specifically pleaded that there was no willful negligence or laches on her part in the non-appearance. The respondents resisted the application contending that there is no sufficient cause for non-appearance and that the grounds stated was without any bonafides. Inter alia it was contended that there was no marriage between the appellant and the deceased Sri. Sathyaraja Panicker and that they never lived as husband and wife.

5. The Family Court found that the appellant had failed in discharging her burden to prove that the delay occurred in the matter of applying the restoration was

genuine and bonafide. It was further observed that the decree in the counter claim was pronounced only on 13-10-2010, whereas the reason stated in Ext.A1 dated 11-05-2012 cannot be believed as a bonafide reason for non-appearance during the year 2009. Hence the application for restoration of the OP and for setting aside the decree in the counter claim were dismissed. It is challenging the said order the present appeal is filed.

6. Heard counsel appearing for both the parties. Learned counsel for the petitioner contended that the court below had failed in appreciating the factual circumstances in a legal and proper manner. It is pointed out that the fact that the appellant is a lady aged 70 years, had omitted notice of the court below. It is also contended that decree granted in the counter claim was totally illegal and that the Family Court was lacking jurisdiction in that matter, because in the counter claim itself it was contended that the appellant is occupying the building on the basis of a rental arrangement and that she had failed to make payment of the rental amounts after the death of Sri. Sathyaraja

Panicker. Per contra, learned counsel appearing for the respondents contended that the OP filed seeking declaration was totally frivolous and that the appellant had even suppressed the fact that another OP filed seeking the very same relief was dismissed earlier.

7. Having considered the rival contentions made across the Bar, we are of the opinion that there was no decision rendered by the Family Court on merits of the issue. Claim made by the appellant was that she is the wife of deceased Sathyaraja Panicker and two children were born out of the relationship. It is well settled through various legal precedents that, courts should endeavour to decide causes on merits, as far as possible, rather than dismissing them on technicalities. The Family court declined to restore the OP mainly on the ground that the appellant failed to prove genuine cause for the delay occurred in applying to restore the case. It is also well settled that in the matter of condonation of delay the courts should take a liberal attitude considering ultimate achievement of justice and to prevent its miscarriage.

Considering the fact that the appellant/petitioner was a lady aged 70 years and that she had produced some evidence to show that she was undergoing treatment for rheumatic diseases, the Family Court ought to have taken a lenient attitude, of course, subject to terms. Therefore we are inclined to allow this appeal and to set aside the order impugned, to grant relief to the extent of restoring the OP for a fresh disposal on merits.

8. In the result, the appeal is allowed and the order passed by the Family Court, Thiruvananthapuram in I.A Nos.1882/2012 & 1883/2012 in OP No.530/2005 is hereby set aside. The Family Court is directed to restore OP No.530/2005 on its files. So also the decree passed in the counter claim in the above OP will stand set aside. The Family Court will proceed further to dispose of OP No.530/2005 along with counter claim afresh on merits, after affording opportunity to both parties concerned. The above order is issued subject to condition of the appellant paying cost of Rs.3,000/- to the respondents and on filing a memo to that effect before the court below.

9. The Family Court shall take all earnest endeavour to dispose of the matter at the earliest considering the fact that the appellant is an aged lady and that the OP is of the year 2005.

Sd/-
V.K. MOHANAN
JUDGE

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge